No. 15,187

United States Court of Appeals
For the Ninth Circuit

S. B. HUFFMAN, Trustee in Bankruptcy of Charles Manfre Transportation Co., Bankrupt,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF FOR APPELLEE.

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Subject Index

Table of Authorities Cited

Cases

Statutes

Texts

Miscellaneous

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BRIEF FOR APPELLEE.

OPINION BELOW.

The District Court did not render any opinion other than that contained in the Order of May 16, 1956. (R. 18.)

JURISDICTION.

On November 1, 1955, a Petition for Order to Show Cause was filed by the Trustee in Bankruptcy and on the same date, the Order to Show Cause was entered and thereafter served upon the appellee. A Response

to the Order to Show Cause was filed by the appellee on January 17, 1956, and, on January 26, 1956, a Turnover Order was entered in favor of the appellee. A Petition for Review was taken by appellant to the District Court for the Northern District of California, Southern Division, on March 1, 1956, and on May 16, 1956, an order affirming the Turnover Order of the Referee was filed. Appellant filed a Notice of Appeal on May 26, 1956. Jurisdiction of this court is based upon Section 47, Title 11 of the United States Code and Section 1291 of Title 28, United States Code.

QUESTION PRESENTED.

Whether a levy for taxes upon a debt owed to the taxpayer before the taxpayer was adjudicated a bankrupt gave the United States the possession required by Section 67c of the Bankruptcy Act so as to make its lien for taxes completely prior in right to the claim of the Trustee in Bankruptcy and not subject to the payment of any debts.

STATUTES INVOLVED.

These appear in Appendix A, *infra.*

STATEMENT OF FACTS.

The facts as submitted to and found by the Referee in Bankruptcy are as follows:

(1) That prior to March 9, 1954, Manfre Transportation Company, Inc., was indebted to the United States

for transportation, income, and withholding employment taxes in the sum of $18,457.57. That statutory liens were filed in Santa Cruz County, the place of business of the above-named taxpayer prior to March 9, 1954.

(2) That prior to March 9, 1954, Utility Trailer Sales Company of San Francisco, California, repossessed several trailers on a conditional sales contract with the above-named taxpayer; that on March 9, 1954, the United States of America by and through its District Director of Internal Revenue did cause a levy to be made on said Utility Trailer Sales Company, directing that all property, rights to property, moneys, credits, and bank deposits in the possession of said Utility Trailer Sales Company belonging to Charles Manfre Transportation Co. be delivered to said District Director, to be applied on said Charles Manfre Transportation Co.'s indebtedness for Federal tax liens; that the obligation of the Utility Trailer Sales Company at the time said levy was served to said Charles Manfre Transportation Co. was $2,309.49; that said obligation was not paid to the United States, but when the taxpayer was adjudicated a bankrupt July 4, 1954, the same was paid to the Trustee who now holds it.

Appellant in the third paragraph of his "Statement of the Case" (Br. 3) appears to state that the appellee made some demand for certain trucks but no issue was raised or any point made about the trucks or the trailers either with the Referee in Bankruptcy or the District Court. The only issue below related to the debt of the Utility Trailer Sales. In the fourth paragraph (Br. 3),

appellant commences to state facts which do not appear in the record and argues therefrom—facts relating to the nature and extent of the taxpayer-bankrupt's claim against Utility Trailer Sales. This is continued through the brief. See particularly pages 9, 22, 23, 24, 27, 31 and 38. These unsupported arguments assert that the seized property was something other than an obligation of $2,309.49 owing at the time of the levy as specifically found by the Referee and adopted by the District Court.

SUMMARY OF ARGUMENT.

When the tax levy was made upon the debt owing to the taxpayer, later the bankrupt herein, with service of notice of the levy upon the debtor of the taxpayer, it effected a seizure of the obligation and gave the United States possession of the debt or right against the debtor which the taxpayer then had. Such possession was effective against the Trustee in Bankruptcy of the taxpayer under Section 67c of the Bankruptcy Act.

The rights of all parties were fixed on the day the levy was effected upon the Utility Trailer Sales. On that date, the Utility Trailer Sales became the debtor of the United States and not the debtor of the bankrupt and if it failed to comply with the levy, it would subject itself to personal liability under Section 3710(b), Internal Revenue Code 1939.

The United States has at all times resisted the jurisdiction of the Bankruptcy Court to oust it from possession of the property seized. The mere response to the

Order to Show Cause issued by the Bankruptcy Court does not thereby confer jurisdiction upon that court to do other than order the trustee to pay the equivalent of the debt already received from the debtor to the United States.

ARGUMENT.

THE SERVICE OF THE LEVY UPON THE DEBTOR OF THE TAXPAYER PRIOR TO THE FILING OF THE PETITION IN BANKRUPTCY CONSTITUTED A SEIZURE OF THE DEBT.

A. Introduction.

Section 67b of the Bankruptcy Act (11 U.S.C. 107b) provides, among other things, that a Federal tax lien which arises before bankruptcy is effective against the Trustee in Bankruptcy. Section 67c provides that with respect to personal property such a lien unless reduced to possession is subordinate to the payment of certain classes of debts under Section 64a(1) and (2) of the Bankruptcy Act (11 U.S.C. 104a(1) and (2)). The principal issue here is whether the United States' tax lien on the personal property herein was reduced to possession. The personal property was, as the Referee and the District Court found, the debt from Utility Trailer Sales to the taxpayer, Charles Manfre Transportation Co., which later became the bankrupt herein, in the amount of $2,309.49. This debt, being intangible property, could not, obviously, have been made the subject of actual physical possession, such as tangible physical assets which could have been seized and sold at public auction as provided by Section 3693, Internal Revenue Code 1939; nor is this a case involving intan-

gible property which is evidenced by some negotiable instrument which also may be made the subject of actual possession and likewise may be subjected to public sale.

B. Intangible property is subject to a Federal tax lien, and may be levied upon.

Intangible property is subject to the Federal tax lien. *United States* v. *Liverpool, London & Globe Ins. Co.,* (1955) 348 U. S. 215; *Cannon* v. *Nicholas,* (C.C.A. 10, 1935) 80 F. 2d 934; *Kyle* v. *McGuirk,* (C.C.A. 3, 1936) 82 F. 2d 212; *United States* v. *First Capital Nat. Bank,* (C.C.A. 8, 1937) 89 F. 2d 116; *McKenzie* v. *United States,* (C.C.A. 9, 1940) 109 F. 2d 540; *United States* v. *Long Island Drug Co.,* (C.C.A. 2, 1940) 115 F. 2d 983, 985-86; *United States* v. *Warren R. Co.,* (C.C.A. 2, 1942) 127 F. 2d 134, 137-138; *Investment & Securities Co.* v. *United States,* (C.C.A. 9, 1944) 140 F. 2d 894; *United States* v. *Manufacturers Trust Co.,* (C.A. 2, 1952) 198 F. 2d 366.

Collection of outstanding tax liens may be effected by seizure and sale at public auction of the property, Section 3693, Internal Revenue Code 1939; or by foreclosure of the lien by judicial proceedings, Section 3678, Internal Revenue Code 1939; or in the case of intangibles as in this proceeding, the debt may be levied upon. Section 3710(a), Internal Revenue Code 1939; *United States* v. *Manufacturers Trust Co., supra; United States* v. *Marine Midland Trust Co.,* (S.D. N.Y., 1942) 46 F. Supp. 38; *Matter of Mutual Carrier Co., Inc.,* (Conn., 1952) 52-2 U.S.T.C., Par. 9507; S.M. 3804A, V-1 Cum. Bul. 110 (1926).

C. Possession of an intangible obligation is complete when levied upon since actual physical possession is impossible.

This case is one of first impression for this court. The problem has, however, been presented to the Court of Appeals for the Fourth Circuit and that court held that the levy upon a debt prior to the filing of a petition in bankruptcy constituted a seizure of that debt and the Trustee in Bankruptcy took nothing as against the United States nor was the claim to be subordinated to other debts of the bankrupt. *United States* v. *Eiland,* (C.A. 4, 1955) 223 F. 2d 118. The court in deciding that case correctly observed, we submit, that the United States had taken all steps which were legally available to subject the debt to its possession.

The practical effect of the levy was to transfer the obligation to the United States, *United States* v. *Eiland,* 223 F. 2d at 123, and to make the debtor of the taxpayer a debtor of the United States. *United States* v. *Manufacturers Trust Co.,* (C.A. 2, 1952) 198 F. 2d 366, 368-69.

The levy which was served upon Utility Trailer Sales advised it of the seizure. It states:

> You are hereby notified that there is now due, owing, and unpaid from Charles Manfre Transportation Co., Inc., 720 Walker Street, Watsonville, California, to the United States of America the sum of Eighteen Thousand Four Hundred Fifty-seven and 57/100 dollars ($18,457.57) as and for an internal revenue tax.
>
> You are further notified that all property, rights to property, moneys, credits and/or bank deposits now in your possession and belonging to the aforesaid taxpayer and all sums of money owing from

> you to the said taxpayer are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth above from the amount now owing from you to the said taxpayer, or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

There is no question the bankrupt could not have demanded the payment of the debt from the Utility Trailer Sales at any time after the service of the levy. The position urged by the appellant herein would materially increase the rights of the bankrupt without the benefit of any specific provision voiding the prior levy. A petition in bankruptcy was never intended to have such an effect. *York Mfg. Co.* v. *Cassell,* (1906) 201 U.S. 344; *Mason* v. *Citizens National Trust & Savings Bank of Los Angeles,* (C.C.A. 9, 1934) 71 F. 2d 246; *Matter of Knox-Powell-Stockton Co., Inc.,* (C.C.A. 9, 1939) 100 F. 2d 979. See also *Rode & Horn* v. *Phipps, et al.,* (C.C.A. 6, 1912) 195 Fed. 414 at 420.

The Utility Trailer Sales would have been completely exonerated had it paid the United States in satisfaction of the levy. *Columbia Nat. Life Ins. Co.* v. *Welch,* (C.C.A. 1, 1937) 88 F. 2d 333; *United States* v. *Ocean Accident and Guarantee Corp.,* (S.D. N.Y., 1948) 76 F. Supp. 277; *United States* v. *Marine Midland Trust Co.,* (S.D. N.Y., 1942) 46 F. Supp. 38; *Determan* v. *Jenkins,* (N.D. Ga., 1953) 111 F. Supp. 604. On the other hand the liability of the Utility Trailer Sales under Section 3710(b), Internal Revenue Code 1939, for failure to

turn over the property previously owing to the taxpayer would not be satisfied by payment of the proceeds to the Trustee in Bankruptcy as the petition in bankruptcy was filed subsequent to the levy.[1]

D. The service of the levy made the seizure complete.

It is implied by appellant that the United States could have done more in respect to accomplish the seizure of the intangible property by seizing the books and records of the taxpayer as was done in the cases of *In re Brokol Manufacturing Co.,* (C.A. 3, 1955) 221 F. 2d 640 and *In re Mutual Carrier Co., Inc.,* (D. Conn., 1952) 52-2 U.S.T.C. 9507. (Appellant's Brief, p. 33; Footnote 29, p. 42.) In the case of *In re Mutual Carrier Co.,* as pointed out in the Appellant's Brief, the Internal Revenue did three things: "(1) Seized the books and records of the bankrupt prior to bankruptcy; (2) notified the account debtors of this seizure; and (3) directed the debtors to make payment of the accounts directly to the Collector." If this is sufficient to constitute a seizure under Section 67c which the Government contended it is and as these courts so held, then certainly the levy in this case has the same effect. Steps 2 and 3 were fully complied with. The debtor, Utility Trailer Sales, was advised of the seizure by the service of the

[1]The only defenses available under Section 3710(b) are those expressly provided by the statute. Those are that no property was held which belonged to the taxpayer or the property was subject to a prior attachment or execution under any judicial process, neither of which existed here. *Commonwealth Bank* v. *United States,* (C.C.A. 6, 1940) 115 F. 2d 327; *United States* v. *Metropolitan Life Ins. Co.,* (E. D. Pa., 1941) 36 F. Supp. 399; *United States* v. *Manufacturers Trust Co.,* (C.A. 2, 1952) 198 F. 2d 366. One in position of Utility Trailer Sales would, therefore, be faced with double liability.

levy which also demanded payment to the Internal Revenue. The first step is missing in this case. However, the seizure of books and records has absolutely no legal effect whatsoever. While books kept in the ordinary course of business may, in a proper case, be some evidence of a debt, they certainly do not constitute the debt. The books and records could be altered, lost or even destroyed and the right to property would be unaffected. The presence or absence of such records has absolutely no bearing upon the existence or nonexistence of the rights to property. They are, at most, a matter of internal management and have no binding legal effect on anyone. This fact is graphically portrayed by the decision of *United States* v. *Manufacturing Trust Co.,* (C.A. 2, 1952) 198 F. 2d 366. In that case, the Internal Revenue levied upon the taxpayer's savings account by service of a levy upon the defendant-bank. The bank contended that it was not required to honor the levy since the bank deposit book had not been relinquished. The court held this did not constitute a defense for failure to honor the levy, and the book had nothing whatsoever to do with the obligation levied upon, which was the debt. Underlying the decision, of course, is the fact that the bank book was merely a means of internal control required by the bank but which had no legal bearing upon the existence or nonexistence of the right to receive the property.

The seizure of the books of the taxpayer in the case of *In re Mutual Carrier Co.* was obviously for the sole purpose of advising the District Director of who owed the taxpayer money so that he could then, in turn, levy

upon the debts. The decision supports the position of the United States in this case.

E. Section 67c was never designed to affect the levy supported tax lien in this case.

The underlying reasons for Congress enacting the subordination clause in Section 67c is described by Professor Collier as follows:

> Notwithstanding the long established bankruptcy principle that valid liens should be enforceable in their entirety as against general, unsecured creditors and those entitled to priority, the realization developed that state-created statutory liens, like state priorities, to the extent they are recognized in bankruptcy run counter to the underlying objective of equitable distribution of the debtor's assets among all his creditors. As a result of long inaction of tax authorities, liens for taxes which had accumulated over a number of years often consumed a bankrupt's entire estate, even to the exclusion of costs and expenses of the bankruptcy proceedings. Statistics compiled by the Attorney General demonstrated that rent liens often consumed a very substantial portion of an estate and indeed the whole estate if not large. This situation was further aggravated in the later years of administration under the Act of 1898 by the growth of special legislation favoring public and private claims by granting liens to secure them. To afford protection to administrative costs and expenses and to wage claims, the authors of subdivision *b,* which expressly reaffirmed the validity of statutory liens, collaborated in a limited subordination of those liens.
>
> 4 *Collier on Bankruptcy,* p. 189.

See also *City of New Orleans* v. *Harrell,* (C.C.A. 5, 1943) 134 F. 2d 399; *Matter of Valde Refrigeration Manufacturing Co.,* (E.D. Mich., 1947) 75 F. Supp. 443; *City of New York v. Hall,* (C.C.A. 2, 1944) 139 F. 2d 935.

The section was designed to insure that the so-called "floating liens" would not amount to a surprise dissipation of the entire estate to the exclusion of costs of administration and priority wage claims. The tax levy changed the "floating lien" to a specific one against a specific item of property with ample notice.

The United States acquires a lien when the taxes are assessed. Section 3670, Internal Revenue Code 1939 (now Section 6321 Internal Revenue Code 1954, substantially unchanged). This lien is in the nature of a secret lien in that there is no public notice. It is also in the nature of a "floating lien" in that it covers all the property of the taxpayer at that time and all after-acquired property. *Glass City Bank* v. *United States,* (1945) 326 U. S. 265; *Citizens National Bank* v. *United States, et al.,* (C.C.A. 9, 1943) 135 F. 2d 527; *Nelson* v. *United States,* (C.C.A. 9, 1943) 139 F. 2d 162. This lien is valid as against the Trustee in Bankruptcy without the filing of any notice. *United States* v. *England,* (C.A. 9, 1955) 226 F. 2d 205. But the lien and the levy should not be confused. The levy, of course, would have no effect upon any property of the taxpayer outside of that being held by the person levied upon. The levy is in no way secret. The Utility Trailer Sales was fully advised that all rights to property had been seized. Any creditor of the taxpayer relying upon such an asset would neces-

sarily inquire as to the status thereof if such were material to an extension of credit or reliance upon the taxpayer's financial status. It is a most common auditing technique for an accountant to correspond with the debtor as to the status of the debt and any inquiry would have revealed the levy. With tangible property, its mere presence creates an inference of ownership.

The appellant contends that one of the underlying considerations in Section 67c and the necessity of actual possession is to give notice that such assets are no longer the taxpayer's. There was sufficient notice in this case. The service of any levy or execution upon an intangible is never a widely publicized fact. In most instances, the only parties with knowledge of such a seizure would be the person issuing the levy and the person upon whom the levy was served. No notice beyond this has ever been required nor is any additional step required under the Internal Revenue Code to perfect the seizure or give additional notice.

F. The tax levy seized the taxpayer's right to receive property, which was in existence at that time.

The appellant contends that the notice of levy upon the obligor was, in any event, insufficient to seize the obligation as it was not then in existence as a fixed amount. (Appellant's Brief, pp. 24-29.) It should be pointed out that this contention is entirely unsupported by the record. In fact, the Referee in Bankruptcy expressly found to the contrary in his findings of fact in the Turnover Order as follows:

* * * *

> that the obligation of the Utility Trailer Sales Company at the time said levy was served to said Charles Manfre Transportation Co. was $2,309.49; that said obligation was not paid to the United States, but when the taxpayer was adjudicated a bankrupt July 4, 1954, the same was paid to the trustee who now holds it.

Even assuming, without in any way conceding, that the exact amount was unknown at the time the levy was served, there was, nevertheless, a right to receive property in existence. The levy seized all property and *all rights to property.* The right to receive the property was quite clearly in existence and it was not brought into existence by later action of the Trustee in Bankruptcy whatever it may have been.

The appellant in support of his argument refers to the decisions in *United States* v. *Metropolitan Life Insurance Co.,* (C.C.A. 2, 1942) 130 F. 2d 149; *United States* v. *Penn. Mutual Life Insurance Co.,* (C.C.A. 3, 1942) 130 F. 2d 495; *United States* v. *Massachusetts Mutual Life Insurance Co.,* (C.C.A. 1, 1942) 127 F. 2d 880. All of these cases involved a levy upon the defendant insurance company for the cash surrender value of certain life insurance policies with that company upon the taxpayer's life. Their holding is that the insurance company holds no property or rights to property corresponding to such cash surrender values unless and until the taxpayer requests the money in writing and relinquishes the insurance policy, and it is only in a foreclosure of lien suit, where the taxpayer as well as the insurance company can be joined, that the taxpayer

can be compelled to exercise his demand for the surrender value. *United States* v. *Prudential Ins. Co.* (E.D. Pa., 1944) 54 F. Supp. 664.

The appellant further contends that a more acceptable procedure in this case would have been for the Government to have foreclosed its tax lien as provided in Section 3678, Internal Revenue Code 1939. Such an action is one which will carve out competing property interests. Here, contrary to appellant's argument in Footnote 13, page 26 of Appellant's Brief, there were no competing property interests. It was all the taxpayer's.

The procedure herein was as intended by Congress when they enacted the levy procedures under Section 3710, Internal Revenue Code 1939. The entire scheme for collection of taxes is designed to operate administratively without recourse to the courts except to enforce obedience to the administrative process or to determine actual controversies. To require a judicial proceeding to enforce every levy would actually swamp the courts since thousands of levies are issued every week with only the smallest fraction of controversies resulting therefrom. There is no reason why any other procedure should have been followed in this case.

G. The authorities relied upon by the appellant are not in point.

The cases relied upon by the appellant are distinguishable from the facts of this case. As stated at the outset, we are dealing here with intangible property which cannot be subjected to physical possession. All of the cases relied upon by the appellant involve tangible

property which can be subjected to physical possession and to public sale.

In *Goggin* v. *Division of Labor Law Enforcement,* 336 U. S. 118, the Internal Revenue Service seized certain assets prior to the filing of the petition of bankruptcy. This fact was not disputed, nor was there any question as to whether the seizure was sufficient under Section 67c. Following the petition in bankruptcy, the assets were relinquished by the Internal Revenue to the trustee for sale by him. The sole question presented to the Supreme Court was whether the proceeds from the sale of the property were to be subordinated as provided by Section 67c or whether only the costs of sale incident to those specific assets were to be deducted prior to payment of the tax claim. The court held that the rights of the parties were determined at the time the petition in bankruptcy was filed, and since the assets had been seized prior thereto, the subsequent relinquishment did not affect the rights of the parties. The holding of the Supreme Court was that the rights of the parties are determined the date the petition in bankruptcy is filed. Here, at the time of the filing of the petition in bankruptcy, the bankrupt had been completely ousted from any rights in and to the debt including any incident of possession.

The other decisions relied upon by the appellant also deal with tangible property. In the case of *Davis* v. *City of New York,* (C.C.A. 2, 1941) 119 F. 2d 559, the city had physical possession of assets prior to the filing of the petition in bankruptcy. In the case of *City of New York* v. *Hall,* the assets had not come into the physical

control of the city prior to the filing of the petition. The two decisions are in no way contrary to one another. The same is true of the other cases relied upon by the appellant. *United States* v. *Sands,* (C.A. 2, 1949) 174 F. 2d 384; *Henkin* v. *United States,* (C.A. 2, 1956) 229 F. 2d 895.

It is contended that the decision in the case of *In re Milo O. Frank,* (S.D. Cal., 1955) 55-2 U.S.T.C., Par. 9772, is contrary to the position urged by the appellee herein. (Appellant's Brief, pp. 10-11.) The decision is not contrary. That case involved a question of whether the Government had possession under Section 67c of certain securities which were in the hands of the bank upon which the District Director of Internal Revenue had previously levied. At the time the levy occurred, the certificates of the stock were in a safety deposit box at the bank. The box was subsequently opened and the bank retained possession of the certificates at all times. They were never in the possession of the United States. The court concluded that the service of the levy on stock certificates was not sufficient under Section 67c. These certificates could, of course, be made the subject of possession, and could be sold at public auction. The certificates embody the intangible property. The transfer of the certificate is necessary to transfer the rights of which it evidences. Such is clearly not the case here, as the obligation from Utility Trailer Sales to the bankrupt was not embodied in any document, or evidenced by any writing.

Appellant attempts to avoid direct precedent of *United States* v. *Eiland,* (C.A. 4, 1955) 223 F. 2d 118,

by arguing that since the Fourth Circuit did not explicitly deal with his ingenious argument contained in pages 39-42 of his brief, it ignored the fact that in clause (2) of 67c (not applicable, however, in this case) both "possession" and "levy" are used. It is a most gratuitous assumption that this was ignored. As was pointed out at the outset of this brief and by the court in the *Eiland* case, a levy effects a reduction to possession where actual physical possession is impossible—as with a debt. A levy does not effect possession when there is a physical thing to take possession of. Clause (2) of the section by using both "levy" and "possession" applies, therefore, to cases where the levy does not effect possession and to cases where there is possession not as a result of levy.

H. The Bankruptcy Court has jurisdiction to determine whether the trustee acquired any rights in the property, but not to oust the United States from possession.

Some mention is made of the jurisdiction of the Bankruptcy Court. It certainly had the jurisdiction to determine whether its officer, the trustee, acquired any rights to the debt, *Taubel-Scott-Kitzmiller Co.* v. *Fox,* (1924) 264 U.S. 426; *May* v. *Henderson,* (1925) 268 U. S. 111, although it had no jurisdiction to oust the United States from possession under a substantial claim. *Cline* v. *Kaplan,* (1944) 323 U.S. 97; *In re Brokol Mfg. Co.,* (C.A. 3, 1955) 221 F. 2d 640. The response to the Order to Show Cause gave the court no greater jurisdiction. See *Cline* v. *Kaplan, supra,* and *Henkin* v. *United States,* (C.A. 2, 1956) 229 F. 2d 895. Since, however, the court found that the trustee had no right to

the debt and would, therefore, be liable to the debtor for having received an amount equal to the debt, the most direct solution was to have the money paid to the United States who had the prior claim and avoid the necessity of having the money travel back through the debtor to the United States. As previously pointed out herein, the debtor's liability to the United States was also beyond the jurisdiction of the Bankruptcy Court.

CONCLUSION.

The District Court's Order affirming the Turnover Order to the Referee in Bankruptcy is correct, and should be affirmed.

Dated, San Francisco, California,
November 16, 1956.

Respectfully submitted,

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(Appendix A Follows.)

Appendix "A"

Appendix A

Bankruptcy Act:

Section 67b (11 U.S.C. 107b):

The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or to any State or any subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition initiating a proceeding under this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

Section 67c (11 U.S.C. 107c):

Where not enforced by sale before the filing of a petition initiating a proceeding under this Act, and except where the estate of the bankrupt is solvent:

(1) Though valid against the trustee under subdivision *b* of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or any subdivision thereof, on personal property not accompanied by possession of such property, and liens, whether statutory or not,

of distress for rent shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision *a* of section 64 of this Act and such liens for wages or for rent shall be restricted in the amount of their payment to the same extent as provided for wages and rent respectively in subdivision *a* of section 64 of this Act; and

(2) The provisions of subdivision *b* of this section to the contrary notwithstanding, statutory liens created or recognized by the laws of any State for debts owing to any person, including any State or any subdivision thereof, on personal property not accompanied by possession of, or by levy upon or by sequestration or distraint of such property, shall not be valid against the trustee.

* * * *

Internal Revenue Code of 1939 (26 U.S.C.):

Section 3670. Property Subject to Lien.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Section 3671. Period of Lien.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

Section 3672. Validity Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors.

(a) Invalidity of Lien Without Notice.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) Under State or Territorial laws.—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) With clerk of District Court of the United States for the District of Columbia.—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) (1) Exception in case of securities.—Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to

a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) Definition of security.—As used in this subsection the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(3) Applicability of subsection. — Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose.

Section 3710. Surrender of Property Subject to Distraint.

(a) Requirement.—Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right

is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Penalty for Violation.—Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

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